

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**SPECIAL HEARING**  
**JUNE 9, 2006**

The Lake County Board of Adjustment met Friday, June 9, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider **BOA#60-06-3, a request by Woodlands Church Lake, LLC, American Land Lease, Inc., Robert Q. Williams, Esq./Williams, Smith & Summers, P.A. for a Notice of Appeal of Lake County's March 23, 2006 approval of Project #2005040005, Application Request #697 (Prestige Concrete), the second amendment of a site plan for a concrete block manufacturing facility, concrete batch plant, office/maintenance building, and ancillary structures on property owned by K & M Properties of Florida, LLC. The applicants are also appealing the March 16, 2006 letter issued by Carol Stricklin, AICP, Lake County Growth Management Director, informing the applicants that the amended site plan would be approved. This administrative appeal was filed on April 13, 2006.**

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman  
Carl Ludecke

**Board Members Not Present:**

Darren Eslinger  
Henry Wolsmann, Vice Chairman

**Staff Present:**

Carol Stricklin, AICP, Director, Department of Growth Management  
R. Wayne Bennett, AICP, Planning Director, Planning and Development Services Division  
Comprehensive Planning Division  
Mary Harris, Public Hearing Coordinator, Planning and Development Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Jennifer Myers, Development Coordinator, Planning and Development Services Division  
Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted the Proof of Publication shown on the monitor, adding that the meeting has been properly advertised as a special meeting. He stated that all exhibits presented at this meeting by applicants and those in support or opposition must be submitted to staff.

Melanie Marsh, Deputy County Attorney, explained Section 14.15.04 of the Lake County Land Development Regulations (LDRs) regarding the appeals process. She stated that at this hearing, the Board of Adjustment (BOA) will be sitting in their appellate capacity. That means that any person who disagrees with the decision or interpretation of the County staff regarding the administration of the LDRs has the

right to appeal to this Board. The BOA in their appellate capacity is strictly limited to that specific staff decision that was made within the 30 days of filing of the appeal. The BOA, as with the variances, does not have the authority to take any action which conflicts with or nullifies any provision of the LDRs or the Comprehensive Plan. Additionally, in their appellate capacity, this Board does not have the authority to invalidate or take any action that conflicts with any provision of a rezoning ordinance. For purposes of this hearing, the BOA must presume that the rezoning ordinance is valid. Upon completion of the presentation from each side, this Board will be required to either affirm, reverse or modify the action or decision appealed from. The BOA must issue a verbal decision at this meeting, and a written order must be executed by the Chairman within 30 days of today's date. The order of presentation for today's hearing will be as follows:

The appellant, which is Woodlands at Church Lake, LLC, and American Land Lease will have one hour.

The County staff will be provided 30 minutes.

Prestige will then have 30 minutes to provide any information that they feel is necessary.

It will then be open to public comment if the Board chooses to have public comment.

Woodlands at Church Lake and American Land Lease will have 30 minutes for rebuttal.

There will then be discussion by the Board and a vote on the appeal.

As this Board may be aware, Ms. Marsh said there have been numerous Notices of Appearance received that were filed by persons other than the appellant, all of which are seeking party status. The LDRs specifically state that this Board has the ability to determine whether these persons should have party status if that status is challenged by another party. To determine standing, this Board should look at whether or not the person seeking party status will suffer an adverse effect to an interest that exceeds the effect upon the public at large. For those who have not filed a Notice of Appearance, this Board may also make a determination whether or not to hear from those individuals as this is an appeal and not a public hearing; if this Board chooses to hear from them, it must determine how much time should be allotted to each speaker.

Chairman Schreiner asked the parties if they had any objection to the Notices of Appearance. On behalf of Woodlands at Church Lake, LLC, Robert Q. Williams said they had no objection. On behalf of Lake County staff, Bruce G. Duncan said he had no objection to the Notices of Appearance. The BOA had no objection to the Notices of Appearance. Chairman Schreiner stated that the Notices of Appearance will stand.

Ms. Marsh asked if the Board would like to decide at this time whether it will allow public comment. In response to Ruth Gray, Ms. Marsh said the Board can delay the decision on public comment until the time of public comment. Ms. Marsh stated that Hal Kantor, who represents AB Ready Mix Concrete, would like to make a statement before the Board makes a decision on public comment. Mr. Kantor said he was with the law firm of Lowndes Drosdick Doster Kantor & Reed, who represent both K & M Properties and Prestige Concrete. He submitted a letter from this law firm as Prestige Exhibit A in hopes that it will bring this matter to a speedy conclusion. He said they are mindful of the concerns of the residents of the Woodlands raised by this proposed construction. Therefore, his clients have authorized him to explain to this Board that they have reconsidered the use of the property for a concrete batch plant. Upon dismissal of this action or a finding that they are in compliance, they would agree not to build the concrete batch plant and to give up their rights to the building permit they have. In addition, they would agree to build a concrete block wall on their property boundary to the west separating this property from the Woodlands property. That should resolve the issue.

Mary Link Bennett asked if the removal of the batch plant would take care of the gunite building. To his knowledge, Mr. Kantor said there is no approved gunite plant on this site plan. He believed they have the legal right to build a concrete batch plant, but they will give up that right. There was a gunite plant on the

original site plan, but that plan was modified some time ago. Ms. Gray thought the gunite plant was taken out with the first amendment and then put back. Mr. Kantor said it is not on the site plan.

Scott McLaren, co-counsel with Robert Q. Williams, also representing Woodlands at Church Lake, LLC, said they met with the Prestige AB Ready Mix Concrete Company on May 5 to discuss the issue. This is the first time that they have ever formally offered to start altering the site plan at issue. He said he found it interesting that they waited until the day of the hearing to do this. He noted that on the March 23, 2006 site plan, there appears to be no gunite plant. However, there is both a concrete batch plant and a very noisy heavy industrial concrete block plant. He said Woodlands Church Lake objects vehemently to any concrete plant being on the subject site where the land use plan specifically prohibits any heavy industrial use such as a concrete block plant, concrete batch plant, or gunite plant.

Mr. Kantor apologized for not presenting their proposal sooner, but he felt it was still a valid offer. There is no gunite plant. He believed the County Attorney just indicated to the Board that the concrete block plant was a decision made previously and is not an issue to be considered at this hearing. If the appellant does not wish to accept their offer, they can proceed with the hearing. Although they are willing to not build the structure that is the source of their complaints and are willing to build the concrete wall between the properties, they are not willing to take down a plant they have built and for which they have permits. That issue is not before the Board at this hearing. He reiterated that they would not build the concrete batch plant if this appeal is dismissed or that without the concrete batch plant, the Board will find them in compliance with the Code.

Carl Ludecke questioned whether the counsel and residents from Woodlands would want to have a recess to discuss this among themselves due to this new information being presented.

Mr. McLaren said the representations from Prestige that this hearing is only about a concrete batch plant are inaccurate. There are two issues at this hearing. The first is a March 23, 2006 site plan approval. There can only be one site plan. The March 23, 2006 site plan has two heavy industrial uses on it. One of the uses is the batch plant that Mr. Kantor spoke of. The other heavy industrial use is a concrete block plant with noise, dust, smoke, trucks moving in and out of the site, and a 24-hour operation. They object to both of those uses. Both of those uses are inconsistent with the Comprehensive Plan. Mr. Ludecke confirmed that Mr. McLaren did not wish to speak with the residents before proceeding with the appeal.

Mr. Kantor said it is his understanding that his offer is withdrawn and not accepted. Mr. Ludecke agreed.

Robert Q. Williams, an attorney with Williams, Smith, & Summers in Tavares, said he was representing, along with co-counsel, Scott McLaren, Woodlands at Church Lake, LLC, who is the applicant before this Board on this petition appeal. He submitted a letter with a check for advertising expense as Woodlands Exhibit A as well as two presentation binders, Volume I (Woodlands Exhibit B) and Volume II (Woodlands Exhibit C). Mr. Williams introduced Shannon Smith, who is the Chief Financial Officer (CFO) for Woodlands Church Lake, LLC, and he is the client representative present. As a review board, this Board has the opportunity to right what the client believes were two wrongs committed by Lake County. He showed a location map on the monitor that was included in Woodlands Exhibit C, Tab 5.1. He spoke of Woodlands at Church Lake, noting the statistics under Tab 2 of Woodlands Exhibit C. He said the average age of the residents is about 65 years old. There are 146 home sites that are fully developed with room for additional residents. He referred to pictures of this community included in Tab 3 of Woodlands Exhibit C. When the Woodlands residents noticed major heavy construction going on immediately adjacent to their property, this was construction they were not aware of nor had any notice of. The residents immediately contacted his law firm and asked them to try to find out what was going on. They learned that the intended use at that time was a major concrete facility similar to one in the southern part of the County that had a concrete batch plant, concrete block plant, and original plans for a gunite plant. This heavy industrial use would be placed on a property that is immediately adjacent to a residential area and that has a Suburban future land use. The Comprehensive Plan is clear that the Suburban land use does not allow heavy manufacturing uses. Permits were issued as far back as June of 2005. The landowners had filed an original site plan in May or June of 2005. Another site plan was filed in the fall of 2005 (Site Plan No. 2). A third site plan was also filed. He pointed out that a permit clerk cannot grant a rezoning by

issuing an illegal permit. They went to Lake County authorities and told them they thought Lake County made a mistake. The County looked into the matter and issued a letter on March 16 stating that everything was okay and Lake County will allow Prestige to continue. Woodlands at Church Lake, LLC, felt that decision was wrong. Therefore, the first wrong that they want this Board to right is to tell the County that the March 16 letter was wrong and they made a mistake by not stopping the construction. The County also approved another site plan for Prestige and intensified the uses that are allowed on the site. The current site plan allows both a concrete batch plant and a concrete block plant. Both of these uses are clearly heavy industrial uses. In their position, he did not feel the concrete batch plant can be separated from the concrete block plant because both uses are heavy, industrial, mechanical, loud, noisy uses. They have all of the characteristics that constitute heavy industrial uses. The second wrong that they would like corrected is the granting of that site plan approval on March 23, 2006. That development order was in violation of the Comprehensive Plan. It should be reversed and cancelled.

In response to Mr. Ludecke, Mr. Williams said the property is zoned MP, which would allow light manufacturing uses in a Suburban future land use category.

Cyndi Tarapani, Vice President of Planning for Florida Design Consultants headquartered in New Port Richey, Florida, gave a history of her work experience, noting that she has been a planner for over 25 years. She showed aerials from 2002 (Tab 5.2) and 2006 (Tab 5.3), which were included in Woodlands Exhibit C. The 2002 aerial shows that the Prestige site had not yet been developed, but Woodlands at Church Lake was quite developed. Houses had been constructed, and the infrastructure for the last phases was built and the lots were ready to be built upon. The 2006 aerial shows that construction had begun on the Prestige site. She spoke of the importance of the Comprehensive Plan, its 12 elements, and the future land use map. She showed the future land use map for this area on the monitor. It can be found under Tab 5.4 of Woodlands Exhibit C. She pointed out that both the Woodlands site and Prestige site are in the Suburban land use category. She said they have a letter from the County confirming that fact. She referred to Policy 1-1.6 of the Comprehensive Plan found under Tab 5E of Woodlands Exhibit C regarding functions of the future use categories and Policy 1-1.15, which shows that heavy industrial is prohibited in the Suburban land use category. She showed on the monitor the definition for heavy and light industrial uses as found under Tab 5D of the Woodlands Exhibit C. According to the definitions, there are three major differences between those two industrial uses: the types of materials started out with (component parts that are assembled versus raw materials that are transformed chemically or mechanically), type of manufacturing process, and whether there are hazardous products used and whether offensive conditions are created by those uses. If either hazardous products or offensive conditions exist, it is a heavy industrial use. She showed a portion of the application that was prepared by the applicant requesting the rezoning at the time (Tab 6 of Woodlands Exhibit C), reading into the record their intention and how it would complement the industrial park. A site plan was included with the application, as required. The staff evaluated that application and wrote a report. She read the recommendation from the staff report also found under Tab 6 of Woodlands Exhibit C. The staff report identified to the same Comprehensive Plan policies that she had referred to earlier. During the Board of County Commissioners (BCC) public hearing in May of 2001, the rezoning proposal for light industrial was presented by staff. Staff also displayed the applicant's site plan (Tab 6 of Woodlands Exhibit C and stamped in as County Exhibit B on 5/2/01). She showed a portion of the video from the May 2001 BCC public hearing (Tab 7 of Woodlands Exhibit C), which included the entire presentation and discussion of that item. The video showed County staff presenting the request as an industrial park with the site plan and with design compatibility. The BCC reviewed and approved that site plan with the rezoning. It was an industrial park with small lots. However, the ordinance that adopted the rezoning contained an error. This ordinance did not reflect the many statements and the intent of the BCC when it was adopted. Ms. Tarapani referred to the first section of Ordinance #2001-86 (Tab 8 of Woodlands Exhibit C) regarding approval of light industrial uses. However, later in the body of the ordinance, it states that light and heavy industrial uses are allowable. This is clearly a typographical error; a typographical error does not have the ability to supersede the Comprehensive Plan for Lake County. The BCC's clear intent was to approve light industrial uses as requested by the applicant and as described in the site plan.

Mr. Ludecke stated that the rezoning was actually for MP, which includes light industrial uses. At this point, there was no concrete block plant involved. It was strictly a developer getting proper zoning and plat

approval with conditions.

Ms. Tarapani showed the site plan approved by County staff, not by the BCC, (Tab 9 of Woodlands Exhibit C) and submitted a copy of that approved March 23, 2006 site plan as Woodlands Exhibit D. She said she had left on the monitor the site plan that was approved by BCC in 2001. There is a very dramatic change between these two site plans. The plan went from an industrial park with 15 or 16 small light industrial users to one use on the entire 23 acres. She discussed Sheet 3 of Woodlands Exhibit D, pointing out the block plant and storage area for the raw materials brought in and used to make the concrete blocks. The storage bins are three sided with no roof or front door. The batch plant is a completely outdoor operation. The block plant is partially indoor and partially outdoor. Related to the batch plant is a Type II washout structure. There is also a storage area for the batch plant. She noted the pretreatment area because of the nature of the materials on the site and the nature of the business. She also pointed out the maintenance and office building on the site. She showed a photograph (Tab 11 of Woodlands Exhibit C) showing the construction on the property. To the right are approved homes as if they already existed. This showed how close the new homes will be to this heavy industrial use. Ms. Tarapani stated that virtually the entire site being used is paved except for the storm water pond.

Mr. Ludecke asked why it was a problem that individual lots were approved and then the site had one use. Ms. Tarapani said the main problem they had with that was that the site plan for 21 lots was approved by the BCC at a public hearing. The BCC, the public, and the developer relied on that plan. If the developer wanted to change the site plan, there is a process to amend the site plan. As part of that process, the BCC reviews the amended site plan and makes a decision. The BCC can supersede their own decision if it is consistent with the Comprehensive Plan. The staff does not have the ability to supersede something the BCC has already approved. Regarding the site plan approved by staff, it did not go back before the BCC; there was no discussion, no one got notice of those proposed changes, and the BCC did not have an opportunity themselves to decide whether or not that use is appropriate and whether or not it is consistent with the Comprehensive Plan. She added that there are two earlier site plans on this project. It is their opinion that those site plans are void or superceded. She has had that discussion, and she had an e-mail from the County staff indicating that is the status of those two site plans. The site plan being discussed at this time is the only site plan that is operative on that site today. She reiterated that a concrete plant is clearly a heavy industrial use. Data indicates that Portland cement, which is one of the main ingredients of concrete, is considered a hazardous material. It is dangerous if not handled properly. She spoke of the water from the washed-out concrete trucks being considered a hazardous material. By law, that water cannot go into the storm water pond or into Church Lake. It is stored in Type II washout structures. The structures are lined containers, and the water stays in those containers until it evaporates. She stated that when County staff approved the most recent site plan, they changed the uses from light to heavy industrial, which is inconsistent with the Comprehensive Plan.

When Ms. Tarapani said she would be showing a video clip of a concrete plant on SR 50 in operation by the same operator, Mr. Kantor said testimony regarding another project in another location is not relevant to the issues before this Board. Chairman Schreiner said he would sustain that.

With respect to the evidence to be heard by the Board at this hearing, Mr. McLaren said he thought there were some rules in the Lake County Code that apply to the consideration of evidence. He submitted copies of Lake County Code Sections 14.00.06, 14.15.04, and 1.06.08 as Woodlands Exhibit E, noting that Policy 14.15.04 appears to be in favor of listening to all of the evidence. Mr. Ludecke asked why "all of the evidence" would include off-site. He felt this Board could hear all evidence from this site. To hear all evidence could include every concrete plant in the County. He did not want to do that. The issue is one site. Mr. McLaren said the batch plant at this site is still included on the site plan, but it is not complete. There is no way to show it other than to show this same cement company with the same type of plant, a batch plant, in this same County. He did not see how that could not be relevant to the issues before this Board with respect to what a batch plant run by this company emits in terms of heavy industrial, noxious smoke, noise, fumes, etc. He felt it was directly relevant.

Ms. Gray felt it was extremely relevant. In the material that the Board read covering this, there were violations existing at that plant, which are before the County at the present time. If it is before the County

now, Chairman Schreiner said this Board should not be discussing it. This Board is limited to discussing only the facts of the issue before the Board. Ms. Gray said that what will be shown is what a finished concrete plant is like and what it may lead to.

**MOTION by Carl Ludecke not to talk about the other concrete plant site in Groveland.**

Ms. Gray asked what Ms. Tarapani wanted to indicate or prove by showing the video of the concrete plant on SR 50. Ms. Tarapani replied that the video shows an operating batch plant in Lake County by the same operator. It shows the offensive conditions primarily. It is proving one part of what heavy industrial is.

**MOTION died for lack of a second.**

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to watch the video clip of the concrete plant on SR 50.**

In response to Chairman Schreiner, Sherie Ross, Public Hearing Coordinator, said there was 12 minutes remaining for this presentation. Ms. Tarapani said the video is about two minutes long so she can finish within the 12-minute timeframe.

**When Chairman Schreiner said a motion is not needed, Ms. Gray and Ms. Bennett withdrew their motion and second.**

Ms. Tarapani showed the video submitted under Tab 12 of Woodlands Exhibit C. To further confirm the hazardous and offensive conditions of a concrete plant, Ms. Tarapani said they asked three experts to evaluate a concrete plant in three different areas. She spoke of Dr. Muszynaki's report as found under Tab 13 of the Woodlands Exhibit C. Regarding noise pollution, Ms. Tarapani said that not only is the equipment very loud on this site, much of it is outdoors and that noise will travel. Because construction begins very early, concrete is expected on a site by 5:30 or 6:00 a.m. That means starting work at the concrete batch plant by 3:00 or 4:00 a.m. with the trucks loading. There will be a continual turnaround of the concrete trucks all day long and the noise from the trucks. There will be dust pollution from the raw materials. She said both properties front on Church Lake. Whatever happens at the subject site will affect their property as well. She referred to a noise report by Dr. Stanley Dunn found under Tab 15 of Woodlands Exhibit C. It states that the noise from the operations will be clearly audible and annoying to the residents of Woodlands at Church Lake. The noise will interfere with normal speech, listening to TV, or enjoying the Florida outdoors. She also referred to an analysis of air and water done by William Zegel that can be found under Tab 16 of Woodlands Exhibit C. She noted that in his analysis he stated that Church Lake itself may be adversely impacted by the shifting in the ecology. Both properties share this lake and want to enjoy the pristine lake.

Ms. Tarapani summarized her presentation with three facts and two conclusions:

1. This Prestige Concrete site is designated Suburban on the future land use plan. The Suburban land use designation prohibits heavy industrial use. The Comprehensive Plan is the constitution for Lake County.
2. A concrete plant is a heavy industrial use. It uses raw materials; it chemically transforms those raw materials in either the batch plant or block plant to make a totally new unique product. The heavy industrial use at the concrete plant has hazardous materials on the site all the time.
3. This heavy industrial use creates offensive conditions. Outdoor storage without being appropriately confined will create offensive conditions. There will also be substantial amounts of noise that will disrupt this residential neighborhood on a daily basis because that is the nature of a concrete plant operation.

**Conclusions:**

1. The concrete plant is inconsistent with the Comprehensive Plan. Inconsistency with the

Comprehensive Plan is a violation of state law and a violation of county regulations, for which there are severe consequences.

2. The site plan should never have been approved. The appellant is asking this Board to overturn the staff's decision on the site plan.

Bruce Duncan, sole attorney to represent staff in this case, reminded the Board that the Board attorney earlier stated that they are limited to decisions on two issues, the March 16, 2006 letter from Carol Stricklin and the third amended site plan approval that was completed by the County on March 23, 2006. This Board does not have the jurisdiction or authority to hear, overturn, or make any other decisions regarding any other matter at this special hearing. Based on the presentation by Ms. Tarapani, Mr. Duncan said the appellant wants this Board to overturn Ordinance 2001-86 that allows heavy manufacturing. Thirty days after that ordinance was adopted and recorded by the BCC is the timeframe to file an appeal for any decision made by the BCC. The decision on that zoning ordinance was completed in March of 2001 and recorded in June of 2001. The County is not trying to tell this Board that this is not a heavy manufacturing use or that heavy manufacturing is allowed in the Suburban land use designation. The County is saying that the staff was bound by the decision of the BCC. He agreed with Ms. Tarapani that staff does not have the authority to supersede something that BCC has approved. In this case, staff did exactly what they had to do; they followed the rules. He has no evidence to indicate that there was a typographical error in Ordinance 2001-86. It clearly says in the ordinance that heavy manufacturing, under the types of uses that are allowed in that particular MP ordinance, is a use that is permitted on this site. The decisions of staff were based on the decision of the BCC when they passed and adopted Ordinance 2001-86. That ordinance became the law that the staff had to follow in subsequent proceedings.

Regarding the site plan that was shown during the BCC public hearing in 2001, the BCC does not approve site plans. At that hearing, Commr. Cadwell referred to the fact that that issue would be addressed later during site plan approval. That site plan was submitted as a conceptual site plan during the hearing as a standard practice in Lake County and, in his opinion, throughout the industry. For the site plan to change is not that unusual when the actual product is put on the ground. The conceptual site plan submitted during that hearing was never made a part of the ordinance, was not attached to the ordinance, and was not recorded along with the ordinance. It was simply an exhibit that was utilized during the hearing in order to show an example of what may or may not happen on this property. He stated for the record that Ordinance 2001-86 is not on the table at this hearing. This Board does not have the authority in this proceeding to address that matter.

Since the appellant has raised the issue regarding notice, he felt he should address that issue for this Board's clarification. In order to do that, he called up Mary Harris. Ms. Marsh swore in Mary Harris.

In response to Mr. Duncan, Ms. Harris said she works for the Department of Growth Management. She has worked for Lake County for 20 years and three months. She was working for the Planning Division in 2001. At that time, she was the public hearing coordinator responsible for the zonings, Board of Adjustment, the Lake County Comprehensive Plan, and notification to the various Board meetings and the advertisements. She confirmed that it was her responsibility to ensure that the notice requirements were met. When Mr. Duncan asked what notice requirements were in place in 2001, Ms. Harris replied that notification was required within a 500-foot radius. Other types of notification were advertisement in the newspaper 15 days prior to the public hearing, and notifying adjacent property owners within the 500-foot radius at least 15 days prior to the public hearing. She was personally responsible for all those notifications. However, she was not responsible for posting the properties. She said she uses the Property Appraiser's latest tax roll to obtain the names and addresses of those properties that are entitled to notice. The advertising is done in the Orlando Sentinel, Lake Sentinel edition, 15 days and seven days prior to the public hearing. The property is posted during a site visit by staff at which time pictures are taken of the site. Ms. Harris submitted a picture of the posting as County Exhibit A. She submitted proof of publication showing the advertisement in the Orlando Sentinel as County Exhibit B. She then submitted a sheet listing the four property owners within 500 feet that were notified as County Exhibit C. These property owners were provided direct notice of the hearing. She submitted a copy of the envelope to Woodlands that was returned due to an incorrect address as County Exhibit D. She said the letter was later mailed out again and was not returned. Mr. Duncan confirmed with Ms. Harris that all three notice

requirements were met under the Code in 2001 as it existed at that time. When these notices are sent out, Mr. Duncan asked if it is common or uncommon to receive letters, questions or phone calls from surrounding residents. Ms. Harris said it is if residents have concerns. In this particular case, she received one letter from Mr. Adkins that is in the file. Mr. Duncan confirmed with Ms. Harris that that is the letter Commr. Poole alluded to at the BCC hearing. Ms. Harris said she received no other letters, comments, or questions from other surrounding property owners.

At the request of Mr. Williams, Ms. Harris put County Exhibit C back on the monitor. He confirmed with Ms. Harris that one of the property owners was Woodland Heritage. In response to Mr. Williams, Ms. Harris said the address for Woodlands Heritage as shown on County Exhibit C was 2050 Coral Way Ste 402 Miami. Mr. Williams asked Ms. Harris to place County Exhibit D on the monitor. This exhibit showed that the letter was actually mailed to 12050 Coral Way Ste 402 Miami. Mr. Williams referred to the stamp on the envelope. In response to Mr. Williams, Ms. Harris said that was the date that the Planning Office received and stamped on the envelope that it was returned due to an incorrect address. Mr. Williams said it appears to be stamped "No Such Number." Ms. Harris agreed. Mr. Williams referred to Tab 18H in Woodlands Exhibit C containing an affidavit from the manager of Woodland Heritage at the time of the required notification period. The affidavit states that he had never received any notice of the zoning hearing.

When the letter was received back indicating that the number was incorrect, Mr. Duncan asked Ms. Harris what she did in response to that. Ms. Harris replied that she resent the notice to the correct address. In response to Mr. Duncan, Ms. Harris said the Code does not require these notices to be sent certified, registered mail or return receipt requested. She sends them by regular mail. Ms. Harris reiterated that the second letter with the correct address was not returned to the County. That would indicate that the addressee received it.

Carol Stricklin, Senior Director of the Department of Growth Management, was sworn in by Ms. Marsh. Mr. Duncan said Ms. Stricklin was the author of the March 16, 2006 letter, one of the issues of the appeal. In response to Mr. Duncan, Ms. Stricklin replied that she began work with the Lake County Growth Management Department on November 7, 2005. She said she was aware of this appeal and understood its content. She said the County received inquiries regarding the legality of the proposed heavy manufacturing use that Prestige wished to undertake at the site. Prestige was seeking amended site plan approval for heavy manufacturing uses pursuant to the zoning ordinance adopted in 2001. When she received the inquiry, she asked one of her staff members to go back and review the history of the property. That staff member reviewed the information verbally with Ms. Stricklin when she completed the research. Based upon the review of the rezoning history, Ms. Stricklin wrote a letter to Shannon Smith on March 16, 2006, concluding that the zoning ordinance in 2001 allowed the proposed use and the project would go forward under the site plan approval. In response to Mr. Duncan, Ms. Stricklin said heavy manufacturing is not allowed in the Suburban land use category. Mr. Duncan asked Ms. Stricklin how she made the determination that this particular use on this particular site was appropriate. Ms. Stricklin said her determination was based upon approved Ordinance #2001-86. That ordinance lists the allowable uses in Section 1.B and heavy manufacturing is listed as an allowable use. Mr. Duncan referred to Tab 8 of Woodlands Exhibit C. At the request of the Mr. Duncan, she pointed out Section 1.B on page 2 of the Ordinance regarding the heavy and light manufacturing. Based on the language in that ordinance, Mr. Duncan asked Ms. Stricklin if it is her position that she was bound by the decision of the BCC. Ms. Stricklin replied that she took the Ordinance approving that use to be binding and to allow heavy manufacturing use on the site. Mr. Duncan said that Ms. Tarapani had stated that County staff does not have the authority to supersede something that the BCC has approved. Ms. Stricklin said that was her determination. The BCC approved Ordinance 2001-86. She was not working for the County in 2001 when the application was filed and processed. She had nothing to do with the drafting of the Ordinance or any of the staff reports. Mr. Duncan was informed by Ms. Stricklin that the ordinance itself, which is signed by the Chairman and recorded in the public records, is the official record. In response to Mr. Duncan, Ms. Stricklin said she believed an ordinance would become effective no later than the time it is recorded in the public records of Lake County. When Mr. Duncan asked about the appellate process for decisions rendered by the BCC. Ms. Stricklin said she believed the appeal period is 30 days after the decision. Ordinance 2001-86 was recorded on June 15, 2001.



When Mr. Duncan asked if Ms. Stricklin personally had anything to do with the processing and review of the site plan, Ms. Stricklin said she did not. That is a function of the planning staff.

Mr. Ludecke stated that the Ordinance obviously does include heavy manufacturing uses. He questioned whether the minutes reflect a discussion about the type of uses. Mr. Duncan said this Board saw the entire hearing of the case in the video shown earlier. Chairman Schreiner pointed out that the subject ordinance was enacted on May 22, 2001, filed with the Secretary of State on June 6, 2001, and became effective on June 6, 2001.

Mr. McLaren confirmed with Ms. Stricklin that a site plan is a development order. He asked Ms. Stricklin if a development order can be issued in violation of the land use plan. Ms. Stricklin replied that all development orders are required to be consistent with the Comprehensive Plan. In response to Mr. McLaren, Ms. Stricklin said she has reviewed the case file for the 2001 rezoning. From her review of the minutes, she understood the motion to be to approve the ordinance itself. Mr. McLaren said the recommendation of staff at that time was to recommend approval of the request to rezone from Agriculture to Planned Industrial limited to light industrial uses such as wholesale and warehouses with the conditions outlined in the ordinance attached hereto. He asked if that was her understanding. She said she has reviewed the staff report, and the staff recommendation was as he stated. Based on her review of the rezoning application and the staff report, he asked if the proposed site plan that was submitted with that application called for light industrial lots. Ms. Stricklin said she was not working for the County at the time. She reiterated that she reviewed the staff report and application. Mr. McLaren displayed the applicant's site plan (Tab 6 of Woodlands Exhibit C and stamped in as County Exhibit B on 5/2/01) that was part of the application that was made to Lake County. Ms. Stricklin said the rezoning ordinance was specifically approved as a result of that application. She said the application in the file includes a list of uses of both heavy and light manufacturing. In response to McLaren, she said she saw no reference to the use of a concrete plant.

Mr. Ludecke confirmed with Mr. McLaren that he is claiming that the wording, "warehousing; industrial (light & heavy);" in the ordinance is a typographical error. Mr. McLaren said this Board must look at the application and the approval as a whole. If this is done, it can be seen that the application and the recommendation of staff were for light industrial. It can also be seen that staff went through a very careful analysis of the land use plan and the land use plan designation, and staff pointed out that this application was consistent with the land use plan. That could only show that the application could not have included heavy industrial. Otherwise, the planning staff would not have made that finding. Based upon those factors, the only reasonable conclusion is that the County intended to rezone this consistent with the Comprehensive Plan.

Mr. Duncan confirmed with Ms. Stricklin that the document approved by the BCC was submitted to the BCC at the public hearing. It was not written after the hearing. If the BCC did not want heavy manufacturing in the ordinance, they had an opportunity to take it out. Ms. Stricklin said that is the purpose of the hearing. In response to Mr. Duncan, Ms. Stricklin said the BCC does not approve site plans.

Mr. McLaren asked Ms. Stricklin to read the first "Whereas" clause in Ordinance 2001-86. She agreed that it does say light industrial in that clause. When Mr. McLaren asked if that ordinance incorporates those "whereas" clauses into the body of the ordinance, Ms. Stricklin said it does not. He asked Ms. Stricklin what portion of the ordinance she would look to in making the determination as to the intent of the BCC. She replied that it is Sections 1, 2, and 3, which are the body of the ordinance and are binding.

Jennifer Myers was sworn in by Ms. Marsh. She said she presently works in the Planning and Development Services Division of the Department of Growth Management. She has worked for the Lake County BCC for seven years and eleven months. She was not working in this division in 2001 when the rezoning was done. At that time, she was working for Building Services. She has been working for Planning and Development Services since July of 2004. Her current job in that division is Development Coordinator. She said she takes in applications for review of site plans, preliminary plats, master plans, and mining applications from the public. She then logs them into the system and sends them out to the various departments for review. It is the individual departments' responsibility to review the plans for compliance

with the Codes. After staff has reviewed the plans, she sets the matter for a Development Review Staff (DRS) meeting with the applicant and staff to discuss the site plan and any comments staff may have. Generally the applicant will then have to make some changes to the site plan and resubmit for final approval. When going through the site plan approval process or the mining site plan approval process, Mr. Duncan asked if there is a requirement in the Code that adjacent property owners must be notified. Ms. Myers said there is no such requirement. Notices are not sent out to anyone other than the engineer, the applicant, or their representatives.

Mr. Duncan asked Ms. Myers if she was responsible for processing the Prestige third amended site plan approval through the system that she just described. Ms. Myers said she was. She has reviewed the file and gave the following timeline:

12/16/05	Site plan application was received into Planning and Development Services.
12/19/05	Insufficient letter was issued. This means they needed additional information.
12/27/05	Sufficiency letter was issued and the project was disbursed to the staff for review.
1/25/06	Staff comments letter was created.
1/26/06	DRS meeting was held.
1/31/06	Revised plans were submitted, but they were insufficient so she was unable to disburse them to staff.
2/17/06	Revised plans were resubmitted and she disbursed them to staff for review.
3/23/06	Site plan approval was granted.

In response to Mr. Duncan, Ms. Myers said staff reviews a site plan for compliance with the LDRs. During this review process, Mr. Duncan asked if any of the staff found this site plan not to be in compliance with the Lake County Code of Ordinances. Ms. Myers said they received staff comment letters so the engineer had to go back and make corrections. Mr. Duncan confirmed with Ms. Myers that staff identified problems with the site plan through the process, and the applicant had to make changes to bring it into compliance. When Mr. Duncan asked if staff signs off on a site plan before those changes are made to bring it into compliance with the Code, Ms. Myers replied “absolutely not.” Mr. Duncan asked if Prestige Concrete was afforded any special treatment in their application for site plan review in this particular process. Ms. Myers said they were not. The same procedure is followed with everyone. When Mr. Duncan asked if Ms. Myers had anything to do with the issuing of any of the building permits in this case, Ms. Myers said she did not.

In the process just described about site plan review, Mr. Williams asked if one of the steps for staff would be to determine if the proposed site plan is consistent with the Lake County Comprehensive Plan. Ms. Myers said that is done by the Senior Planner. Mr. Williams confirmed with Ms. Myers that a site plan is a development order. As such, Mr. Williams said that development order would have to be consistent with the Comprehensive Plan. Ms. Myers agreed. Therefore, Mr. Williams said that would mean that in the Suburban land use category, a site plan that was approving a heavy manufacturing industrial use would not be consistent with the Comprehensive Plan. Ms. Myers said it would not be consistent. However, if there is an ordinance, that takes precedence. Mr. Williams asked Ms. Myers if she was saying that an ordinance takes precedence over the State Comprehensive Plan and if that is the position the Lake County staff is taking. When the site plan is reviewed, Ms. Myers said staff is guided by the ordinance as to what the ordinance was approved for. Mr. Williams asked if Ms. Myers’ review and the staff’s review of the site plan were looking at the ordinance but not necessarily the Comprehensive Plan; Ms. Myers said that was true. Staff was looking at the ordinance.

Mr. Duncan reiterated that this Board is serving as a quasi-judicial body. As such, this Board does not have the power to review, ignore, invalidate, or declare unenforceable an ordinance that was adopted by the BCC. This Board does not have the authority to rule on the sufficiency of the notice from the 2001 hearing. The County disagrees that notice was not provided in accordance with the rules. If the residents

or the property owner wanted to make arguments regarding the validity of the ordinance or the validity of the notice that was provided in the passing or adoption of that ordinance, they should have done so in June or July of 2001, not in June or July of 2006. Prestige Concrete purchased this property in 2003. The adopted ordinance was recorded in the public records of Lake County. There is a certain amount of responsibility that must be placed on purchasers of land to investigate what is around them. The ordinance contains the ability to allow for heavy manufacturing. Had the purchasers done their due diligence and reviewed the public records, they would have discovered that this ordinance was in place at the time they purchased the land in 2003. It is the County's position today that staff did what they had to do. It is what they were bound to do by the law. Although it is understandable that there are emotions involved in this case, this Board must stay focused on the fact that this Board is present at this special hearing in a legal capacity. This Board is being asked to make a legal decision based on the legal principles being presented.

Ms. Gray asked Ms. Stricklin what information is presented to the BCC from the Lake County Planning and Zoning Commission. Ms. Stricklin replied that the material presented to the BCC consisted of a staff report and the ordinance. A presentation is also given by staff as was shown in the video clip. Ms. Gray asked if the site plan with the multi-lots was included in the material presented. As far as she was aware, Ms. Stricklin said the site plan was simply displayed at the BCC public hearing as shown on the video clip.

Mr. Kantor submitted a site plan approved September 26, 2005 as Prestige Exhibit B. This site plan preceded the one being considered at this hearing. He said they agreed with Mr. Duncan and his presentation and testimony elicited. The ordinance approving this zoning was approved by the BCC. The effective date of that ordinance is June 6, 2001. The time to appeal that decision expired some time ago. If the ordinance were reviewed, it would show that no site plan was approved by the BCC. Section 14.09 of the Lake County Code requires much detailed data be submitted with the site plan to constitute a site plan. That did not occur at the hearing in 2001. The MP zoning code under which this was approved specifically allows the option of site plan approval either at the time of rezoning submittal or thereafter. It clearly was not done at the time of rezoning; it was done thereafter. He said it is not accurate that County staff has concluded that if this Board finds the site plan is no longer viable, none of the site plans would apply. What is accurate is that it has not yet been determined by staff. He also said that it is accurate that each of these is an amendment to a previous site plan. If a site plan is rejected, then that amendment is rejected. It is illogical to assume that nothing exists. There is a concrete block plant on this site. This concrete block plant was approved pursuant to a site plan in 2005. Building permits were issued in 2005, and the appeal period expired in 2005. He reiterated that he had offered not to construct the concrete batch plant. The site plan without the concrete batch plant met all County regulations and went through all the County processes. He asked this Board to find the site plan approved with the exception of the concrete batch plant, which they have voluntarily agreed to withdraw.

In response to Chairman Schreiner, Mr. Kantor said the batch plant makes concrete; the block plant can make the blocks. He said he has pictures of their blocks being delivered to Woodlands at Church Lake this week to build on their site. This is an important facility for this community.

Ms. Gray was informed by Mr. Kantor that after the cement is mixed at the batch plant, it is placed in cement trucks and delivered. The discussion earlier about washing out the trucks and the dust associated with the cement plant will be eliminated if there is no batch plant.

Chairman Schreiner confirmed that the hard block product would be created on this property in the concrete block plant.

Ms. Bennett asked about the wall between Woodlands at Church Lake and the plant that Mr. Kantor had spoken of at the beginning of the hearing. Mr. Kantor said the height of the wall would depend on County regulations regarding maximum height.

There was a ten-minute break with the hearing resuming at 3:35 p.m.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to permit one spokesman for the public. There will be no time limit on the presentation by that person.**

**FOR:** Fox, Jr., Gray, Bennett, Schreiner, Ludecke

**AGAINST:** None

**NOT PRESENT:** Eslinger, Wolsmann

**MOTION CARRIED:** 5-0

George Wright, a resident of Woodlands at Church Lake, submitted a paper copy of his presentation as Citizen Exhibit A and showed it on the monitor.

Mr. McLaren reiterated the statement made by Ms. Stricklin that a site plan approval is a development order. He showed the site plan approved on March 23, 2006 on the monitor. He said Ms. Stricklin had also indicated that a development order such as a site plan approval cannot stand if it is inconsistent with the Comprehensive Plan. He added that when cross-examined by Mr. Williams, Ms. Myers conceded that the Comprehensive Plan was not reviewed in connection with this site plan approval. If the Comprehensive Plan had been reviewed in connection with this site plan, as required by law, Mr. McLaren said the site plan would have been rejected because it is inconsistent with the Comprehensive Plan. Although Mr. Kantor had offered to remove the batch plant, he wanted to proceed with the block plant. However, it does not matter whether it is both the block plant and batch plant or just the block plant or just the batch plant, they are all heavy industrial uses and have Type II wastewater, noxious odors, noise, and dust.

When introducing Dr. Muszynski, Mr. McLaren referred to his experience as listed under Tab 13 of Woodlands Exhibit C. Dr. Muszynski showed on the monitor the definition for heavy industrial uses as found under Tab 5D of the Woodlands Exhibit C. He said the raw materials (sand and rock) are stored in reinforced concrete bins with three sides, no top. The Portland cement is brought in by a truck and blown into the silos. The block plant process uses these materials including water to make the blocks, which are stored on site. The manufacturing process, using the raw materials, is all part of the definition of heavy industrial. The other part of the definition of heavy industrial says that the manufacturing process potentially involves hazardous or offensive conditions. By definition, every material that is used in the world must have a material safety data sheet. He referred to the material safety data sheet for Portland cement found at Tab 13D in Woodlands Exhibit C. Portland cement, according to OSHA (Occupational Health and Safety Health Administration), SARA (Superfund Amendments and Reauthorization Act), and the EPA (Environmental Protection Agency), is a hazardous material by definition. He named some of the effects of Portland cement on the skin and other parts of the body. In addition, the block-making machine and the mixer must be cleaned out with water, which becomes a Type II wastewater.

Regarding the offensive conditions, Dr. Muszynski said dust will be produced when the trucks bring in the raw materials and drop them in the containers and when the bulldozers pick up the aggregates and put them on a conveyor belt as the conveyer belts take them up to their hoppers. Noise will be generated by the trucks and in the plant itself as the block-making machine is a very heavy-vibration piece of equipment. A cement block plant is as much a heavy industrial operation as the batch plant.

Mr. McLaren stated that the Comprehensive Plan was not analyzed with respect to this site plan, and every use on that site plan violates the Comprehensive Plan. Ms. Myers' testimony was that she relied upon the 2001 ordinance. The approved 2001 ordinance was based upon an application that included a site plan with several light industrial lots. When comparing that site plan and the site plan with the concrete plant, it can be seen that there is a significant change in use. He submitted a copy of the Use Variance definition as Woodlands Exhibit F, explaining that a use cannot just simply be changed; this would require going through the rezoning process. Notice, both by publication and by mailed notice, is required for a rezoning or a change in permitted uses. There was no publication with respect to this site plan as testified to by Ms. Myers. There was no mailed notice to Woodlands or any of its residents with respect to this change in use. Therefore, he said they also respectfully submit that this site plan violates the Lake County Code and constitutional principles of due process, notice, and an opportunity to be heard.

Mr. McLaren said the County has certain submittal requirements for site plans. He submitted a copy of a portion of Section 14.09.00 (Woodlands Exhibit G) regarding submittal requirements and discussed those

requirements. He spoke of the 140 homes and clubhouse that exist on the Woodlands at Church Lake parcel. He submitted a blow-up of "Additional Site Information" found on the March 23, 2006 site plan as Woodlands Exhibit H. He referred to No 7, which states, "No development exists on surrounding properties. Therefore, no structures, wells, septic tanks, driveways exist." There was no reference to the structures on the adjacent Woodlands at Church Lake parcel. Given this information, Ms. Myers would have thought the adjacent property was vacant. He then referred to No. 12 of this exhibit, which states "Plan avoids conflict with existing land uses. Adjacent properties are undeveloped. Site adheres to established zoning standards."

Mr. McLaren said the courts of Florida have dealt with issues such as this in the past. He submitted a transcript of a court case from the District Court of Appeal of Florida, Fourth District as Woodlands Exhibit I. He read the following from that exhibit: "The general rule is that a building permit issued in violation of law or under mistake of fact may be rescinded although construction may have been commenced." He noted the fact that the subject site plan does not comply with the Comprehensive Plan and that the Comprehensive Plan controls all development in Lake County. He pointed out the fact that this site plan constitutes a change in use from the light industrial lots in the rezoning in 2001. In addition, there was no notice or an opportunity to be heard as well as inaccurate and misleading information in the application for this site plan.

Mr. McLaren spoke of the testimony from the County regarding the incorrect notice for the 2001 ordinance that was returned. He said Mary Harris testified that she believed she sent out another letter, but the Board did not see that second letter as no copy of the letter was made. He felt the more powerful evidence can be found under Tab 18H, Affidavit of Oswaldo Mora, who, during the period of time from 1988 through 2004, was at the office of their predecessor in interest at the correct address in Miami, Florida. Mr. Mora testifies by way of this affidavit that there was no such notice received. Therefore, they feel this is the stronger evidence as to the letter for which the County does not have a copy.

Mr. Williams said it appears there is a disconnect on the part of the staff as far as the importance of the Comprehensive Plan and the way it takes priority over all land use decisions. A rezoning ordinance approved by the BCC does not have priority over the Comprehensive Plan; the Comprehensive Plan rules everything. He referred to Tab 17 of Woodlands Exhibit C regarding a proposed motion that encapsulates what they would like this Board to rule.

Since the ordinance passed by the County said light and heavy industrial, Mr. Ludecke questioned what choices the staff had. In his opinion as a governmental attorney, Mr. Williams said that if the ordinance that is passed by the County is in contradiction to the Comprehensive Plan, it is a nullity. That is why they feel it was a mistake. He did not want to presume that the BCC would adopt an illegal ordinance.

Mr. Ludecke pointed out that this Board's responsibility at this hearing deals only with the site plan. Mr. Williams said their responsibility also deals with the written determination from Carol Stricklin. Mr. Ludecke felt it was inconceivable that the issue of light and heavy industrial was never "picked up" in an ordinance that was not that lengthy.

Ms. Marsh reiterated that under Section 14.15.04 of the LDRs, this Board's only duty at this hearing is to determine whether or not County staff has administered the LDRs correctly in terms of the site plan approval and Ms. Stricklin's letter. Whether or not the ordinance is valid is not for this Board to decide. She asked the Board to put their reasons on the record during deliberations because a written order must be prepared for signature by the Chairman that reflects those reasons.

In response to Mr. Ludecke, Ms. Marsh said testimony was given today by County staff that the DRS looks at the application, looks at the LDRs, and determines whether or not the site plan, in this case, meets all the requirements of the LDRs. The testimony at this hearing was that it did meet the requirements of the LDRs.

Chairman Schreiner was informed by Ms. Marsh that Mr. Williams was correct when he told the Board that the Comprehensive Plan is the governing document for Lake County and that ordinances and the LDRs

should be consistent with the Comprehensive Plan. What this Board has to decide is whether or not staff's interpretation of the LDRs was correct, not whether or not the Comprehensive Plan or ordinance was correct.

Regarding the Board's role, Mr. Williams agreed that the Board is to determine whether the staff's interpretation of the LDRs was correct; but in Section 14.15.04.D, it talks about this Board's powers at the hearing. His understanding of that section is that this Board's actions must be consistent with the Comprehensive Plan. He said the appellant feels that the action the staff took was contrary to the Comprehensive Plan. This Board is their final appeal board.

Mr. Kantor said that what the appellant is asking is not within the jurisdiction of this Board, which is to overturn an action that was taken years ago. There is a finality of permits. The concept is that once permits are issued, there is a time period for appeal; and once that time period is over, it's over. The block plant time period expired some time ago. The time period for an appeal of the zoning ordinance has expired. What has not expired is the site plan before the Board at this hearing. The only relevant issue is with respect to the concrete batch plant because the other facilities on the site were approved long ago. This Board has the authority to modify the site plan. The modification they suggested was to eliminate the concrete batch plant. He agreed that the Comprehensive Plan supersedes ordinances, but the appeals were not timely filed except with respect to the site plan that is before this Board. The only issue on that site plan that is new is the concrete batch plant. When Mr. Kantor said that if the batch plant is removed from the site plan, it would be compliant, Ms. Gray added "plus some inaccuracies on the site plan." Mr. Kantor said that there have been some houses built fairly recently near to this subject site, but most of the housing has been built on the other side of the project and has been there for a while.

When Mr. Ludecke asked about the consequences if the decision by this Board would require Prestige to remove their existing block plant, Ms. Marsh said the County can always be sued; however, the liability would depend upon exactly what Prestige would be suing on. She reiterated that this Board must determine whether or not staff has correctly interpreted the LDRs.

When Ms. Gray asked the status of the concrete block plant, Mr. Kantor said it is 30 days away from completion. There is also an administration maintenance building and a pond on the site. In response to Mr. Ludecke, Mr. Kantor said the appellant is asking this Board to disapprove everything.

Mr. Duncan said he wanted to clarify a statement made by Mr. Williams, who said this was his last level of appeal. There are already lawsuits filed, and he has a level of appeal from this Board of Adjustment. When Ms. Gray asked if this could go into the circuit court, Mr. Duncan agreed. Mr. Williams agreed with Mr. Duncan, adding that this is the last appeal administratively. There is another appeal, but he would like this Board to be right when that next appeal comes. He asked the Board not to be concerned about what will happen next when making their decision. Although this is not an issue, he said Prestige was aware of this challenge in January of this year, but they proceeded with construction. Perhaps it was done at their own risk. However, if this Board rules in favor of the appellant, those issues would need to be addressed.

When Mr. Ludecke asked if this Board must rule on this requested action as a "yes" or "no," Ms. Marsh replied that the way the LDRs read in terms of this Board's responsibility today is that this Board has the ability to affirm, reverse, or modify the action.

In response to Chairman Schreiner, Ms. Marsh said Prestige could apply for another site plan.

Chairman Schreiner asked permission from the Board to allow a woman in the audience to speak. This woman had appeared in the video they had seen earlier. She was present on behalf of her community as well as others. The Board was agreeable to that.

Amy Wright, a resident of Lake County since 1985, said she has been forced to endure the last five [*sic*] years of living by this company with promise after promise, with site plan after site plan, that has never been completed appropriately. She asked the Board to help these people because no one has ever helped her community. They need this Board to get rid of this place. She did not feel it was fair for these people

to have to live under the conditions she has had live for the last four [*sic*] years.

**MOTION by Ruth Gray to rescind the contents expressed in the Stricklin letter of March 16, 2006 and rescind the approval of the March 23, 2006 site plan.**

Ms. Gray said she had made a motion for these actions because she felt the granting of the approvals were in violation of the Comprehensive Plan and the interpretation of the LDRs under the Comprehensive Plan. She also felt there were inaccuracies in the site plan. The whole question of the notice that has been brought up in this case is unresolved. In reference to the 2001 ordinance, she believed that there was a scrivener's error and negligence on the part of the County to permit the ordinance to be signed because everything leading up to that ordinance spoke in terms of light industrial.

**Howard Fox, Jr. SECONDED the motion.**

**FOR: Fox, Jr., Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**NOT PRESENT: Eslinger, Wolsmann**

**MOTION CARRIED: 5-0**

**Adjournment**

There being no further business, the meeting was adjourned at 4:40 p.m.

Respectfully submitted,

---

Sherie Ross  
Public Hearing Coordinator

---

Donald Schreiner  
Chairman